Re LOH TOH MET, DECD.
KONG LAI FONG & ORS. v. LOH PENG HENG

[C.A. (Thomson C.J., Hill J.A. and Rigby J.)
May 20, 1961]

[J.B. — F.M. Civil Appeals Nos. 23, 24 & 26 of 1960]

Chinese customary marriage — Chinese permitted by his personal law a plurality of wives — Recognition of Chinese polygamous marriages — Whether Chinese Christian can enter into a polygamous union in accordance with his personal law — Christian Marriage Ordinance, Straits Settlements — Christian Marriage Enactment, Johore.

These appeals concern the distribution of the estate of one Loh Toh Met who died at Johore Bahru on July 21, 1958. The deceased was survived by three women whom he married in accordance with Chinese custom, seven children born in wedlock, four adopted children and his father. The deceased died intestate domiciled in Johore. The trial Judge held that the deceased was a person professing the Christian religion and that as he had not married the women in accordance with the provisions of the Christian Marriage Ordinance of the Straits Settlements and of the Christian Marriage Enactment of Johore, each of three purported marriages was void and therefore none of the women nor any of the natural or adopted children was entitled to any share in the distribution of the estate. He held that the father of the deceased alone was entitled to succeed to the estate. The children and the three widows appealed.

Held: (1) Chinese polygamous marriages are lawful and a Chinese can contract a valid polygamous marriage;

(2) even if a Chinese is a Christian he can choose whether to contract a monogamous marriage or a polygamous marriage;

(3) in this case the evidence does not show that the deceased was a person professing the Christian religion at the time of any of his marriages;

(4) the deceased was a person permitted by his personal law a plurality of wives and he validly entered into contracts of marriage to the three women who are therefore to be regarded as his widows and their children born during wedlock as his legitimate natural children.

(5) as the adopted children were not adopted under the provisions of the Adoption Ordinance, 1952, they were not entitled to any share in the estate of the deceased.

Cases referred to:—

(1) *Abd-ul-Messih* v. *Farra*, 13 App. Cas. 431, 437.
(2) *Lao Leong An*, Leic. 418.
(3) *Choo Eng Choon, Choo Ang Chee* v. *Neo Chan Neo & Ors.*, 12 S.S.L.R. 120.
(4) *Cheang Thye Phin* v. *Tan Ah Loy* [1920] A.C. 369, 373.
(5) *Yap Kwee Ying* v. *Lai Kim Foh* [1950] M.L.J. 35.
(6) *Reg.* v. *Willans*, Leic. 66; 3 Ky. 16.
(7) *In the Goods of Abdullah*, 2 Ky. 8.
(8) *Chu Siang Long*, Leic. 460.
(9) *Dalrymple* v. *Dalrymple*, 2 Hagg. Con. 59.
(10) *Ruding* v. *Smith* 2 Hagg. Con. 371.
(11) *Warrender* v. *Warrender* (1835) 2 Cl. & F. 488.
(12) *Srini Vasan* v. *Srini Vasan* [1946] P. 67, 70.
(13) *Chulas & Kachee* v. *Kolson* Leic. 462.
(14) *Hawah* v. *Daud* Leic. 253.
(15) *Goodman's Trusts*, 17 Ch. D. 266.
(16) *Choa Choon Neoh* v. *Spottiswoode*, 1 Ky. 216.
(17) *Ong Cheng Neo* v. *Yeap Cheah Neo*, 1 Ky. 326 on appeal to Privy Council, 1 Ky. 337; L.R. 6 P.C. 361.
(18) *Khoo Tiang Bee* v. *Tan Beng Gwat*, 1 Ky. 413.
(19) *Khoo Hooi Leong* v. *Khoo Hean Kwee* [1926] A.C. 529.
(20) *Khoo Thean Tek's Settlements* [1928] S.S.L.R. 178 on appeal [1929] S.S.L.R. 50.
(20a) *Khoo Hooi Leong* v. *Khoo Chong Yeok* [1930] S.S.L.R. 127; [1930] A.C. 346.
(21) *Yap Tham Thai* v. *Low Hup Neo* (1919) 1 F.M.S.L.R. 383.
(22) *Hyde* v. *Hyde* (1866) L.R. 1 P. & D. 130.
(23) *Bethell* v. *Hildyard*, 38 Ch. D. 220.
(24) *Brook* v. *Brook* (1861) 9 H.L.C. 193, 207.
(25) *Dorothy Yee* [1956] M.L.J. 257.
(26) *In re Henry Lee Fow Lee* [1953] M.L.J. 106.
(27) *Chia Teck Leong & Ors.*, v. *Estate and Trust Agencies (1927) Ltd.*, [1939] M.L.J. 118.
(28) *Chetti* v. *Chetti* [1909] P. 67.
(29) *Anwarduddin* [1917] 1 K.B. 634.
(30) *Kolandaivelu* v. *Dequidt*, I.L.R. 40 Mad. 1030.
(31) *Maha Ram* v. *Emperor* A.I.R. 1918 All. 168.
(32) *Queen-Empress* v. *Paul* (1897) 20 Mad. 12.
(33) *Lopez* v. *Lopez* I.L.R. 12 Cal. 706.
(34) *Saldanha* v. *Saldanha* I.L.R. 54 Bomb. 288.
(35) *De Wilton* v. *Montefiore* [1900] 2 Ch. 481.

CIVIL APPEAL.

R. Murugason for appellants in Civil Appeal No. 23/60.

Philip Hoalim (*Sr.*) for appellant in Civil Appeal No. 24/60.

M. Karthigesu for appellant in Civil Appeal No. 26/60.

M. B. Brash for natural children in all appeals.

N. A. Mallal and *Y. R. Jumabhoy* for respondent.

Cur. Adv. Vult.

Thomson C.J.: These appeals concern the distribution of the estate of one Loh Toh Met who died at Johore Bahru on 21st July, 1958.

The deceased was survived by three women with each of whom he had entered into a relationship of a connubial nature in accordance with Chinese custom which for convenience I shall call a Chinese marriage. These were Madam Kong with whom the Chinese marriage was contracted in Singapore in 1932, Madam Yong with whom the Chinese marriage was contracted in Johore in 1940 and Madam Chan with whom the Chinese marriage was contracted in Johore some time between 1953 and the death of the deceased. All of these women are parties to the present proceedings. The deceased was also survived by his father Loh Peng Heng who is also a party to the proceedings and by eleven children. Of these, six named Anthony, Philomena, Charlie, Daniel, Emmanuel and Rosa are the natural children of the deceased by Madam Yong, all born in wedlock, one by name Francis is the natural son of the deceased by Madam Chan, born in wedlock, and four by name Mary, Lucy. Annie and Bartholomew were adopted by the deceased and one or other of his wives at various times.

The deceased died intestate, and it is common ground that at the time of his death his domicile was in the State of Johore. The distribution of the whole of his estate, movable and immovable, thus falls to be distributed in accordance with the provisions of the Distribution

Ordinance (No. 1 of 1958) which came into force on 1st May, 1958.

By section 6(1)(ii) and (iii) of that Ordinance where a man dies intestate leaving a wife and issue, 1/3 of the estate goes to the surviving wife and the balance goes to the issue to be held on the statutory trusts set out in section 7. By section 3 "issue" is defined as including children and the descendants of deceased children and the definition of "children" includes legitimate children and, by reason of section 29 of the Adoption Ordinance, 1952, children adopted under the provisions of that Ordinance but excludes children adopted otherwise than under the provisions of that Ordinance. By section 6(2) if the intestate "be permitted by his personal law a plurality of wives" and leaves surviving him more wives than one these wives are to share among themselves equally the widow's share as defined by section 6(1)(ii). By section 6(1)(iv) where the intestate leaves no widow and no issue then the estate goes in the first place to any surviving parent or parents.

After the death of Loh Toh Met, Madam Kong and Madam Chan applied for Letters of Administration to his estate and in their petition set out themselves, Madam Yong, all the natural children and all the adopted children who have been enumerated as being at the time of his death the only next-of-kin of the deceased. They did not, however, differentiate between the adopted children and the natural children. Madam Yong lodged a caveat to the petition and an order was then made that an issue be tried "to determine as to who are the next-of-kin and issue who are entitled as beneficiaries" in the estate of the deceased. Madam Yong then filed a defence which was to the effect that although Madam Kong and herself had been wives of the deceased Madam Chan had not been his wife and that certain of the children were not natural children but adopted children.

At a later stage Loh Peng Heng, the father of the deceased, also filed a caveat and on being joined as a second defendant in the probate suit pleaded in effect that none of the widows was a lawful widow and none of the children were legitimate children on the ground that the deceased was a person professing the Christian religion and had not married Madam Kong in accordance with the Christian Marriage Ordinance of the then Straits Settlements and had not married Madam Yong or Madam Chan in accordance with the Christian Marriage Enactment of the State of Johore.

In the event Neal J. held that all three women became the wives of the deceased according to Chinese custom and were thus his widows according to that custom, that the children Mary, Lucy, Annie and Bartholomew had been adopted by the deceased according to Chinese custom but had not been adopted in accordance with the provisions of the Adoption Ordinance and that the children Francis, Anthony, Philomena, Charlie, Daniel, Emmanuel and Rosa were the natural children of the deceased by Madam Yong and Madam Chan. He went on, however, to hold that the deceased at all material times was a person professing the Christian religion, that he had not married Madam Kong in accordance with the provisions of the Christian Marriage Ordinance of the Straits Settlements and had not married Madam Yong or Madam Chan in accordance with the Christian Marriage Enactment of Johore, that accordingly each of these three purported marriages was void and therefore none of these women nor any of the natural or adopted children was entitled to any share in the distribution of the estate. On that he held that the person entitled to succeed to the estate was the father Loh Peng Heng. He accordingly declared that Loh Peng Heng, the father of the deceased, was alone entitled to succeed to the estate and ordered that Letters of Administration be granted to him.

Against that judgment the children and the three widows have all appealed, and the main ground of their appeal is, briefly, that the three Chinese marriages were all valid.

As regards the adopted children, their case stands on a different footing from that of the natural children and it will clear away a question that does not affect the main issue before us if I say at this stage that in my view any appeal by them must in any event fail. Regardless of the question of the validity of the marriages it is quite clear from the wording of the Distribution Ordinance that an adopted child can have no part in the succession of his adoptive parents unless he has been adopted in accordance with the provisions of the Adoption Ordinance, 1952, and none of the adopted children in the present case can claim to have been so adopted. It is true that one of these children who was *de facto* adopted was registered under the Registration of Adoptions Ordinance, 1952. That, however, is beside the point because registration of a *de facto* adoption under that Ordinance of itself confers no succession rights.

Coming now to the question of the marriages, the Distribution Ordinance provides, as did the now repealed Distribution Enactment of the State of Johore, that if a person dying intestate is "permitted by his personal law a plurality of wives" and leaves surviving him more wives than one then all the wives who do survive him are entitled to share equally in the widow's third share of the estate.

The logical approach, therefore, to the present appeals is to inquire in the first place whether the personal law of the deceased permitted him a plurality of wives. Then we must inquire whether he was a person who professed the Christian religion and if he was whether that fact operated in any way so as to alter his personal law or so as to render void his marriages with Madam Kong, Madam Yong and Madam Chan by reason of anything contained in the relevant statutes relating to Christian Marriage.

Whatever may have been the position in the middle ages, in the modern world, and in particular in the eyes of the law of England, a man's personal law relating to status and the legal consequences which flow from status depends upon his place of domicile. As was said by Lord Watson in the case of *Abd-ul-Messih* v. *Farra* [1]:—

"It is a settled rule of English law that civil status, with its attendant rights and disabilities, depends, not upon nationality, but upon domicil alone; and, consequently, that the law of the testator's domicil must govern in all questions arising as to his testacy or intestacy, or as to the rights of persons who claim his succession *ab intestato*."

In certain cases, however, the law of the place of domicile may allow a different personal law to different classes of persons. In India, for example, an individual's personal law generally speaking depends on the religious society within the political society to which he belongs, the microcosm within the microcosm.

At this stage it will be desirable to state certain historical considerations.

The East India Company acquired Penang by treaty from the Ruler of Kedah in 1786 and governed it as part of the Presidency of Fort William until 1805 when it was formed into a separate Presidency. In 1824 the Company acquired Singapore by treaty from the Ruler of Johore, by a treaty of the same year Malacca was ceded by Holland to the British Crown and in the following year both Singapore and Malacca were annexed to Penang by Act of Parliament (6 Geo. IV, c. 85, s.21) as one Indian Presidency. In 1830 this separate Presidency was abolished and the three Settlements became subordinate to the Presidency of Fort William. As part of India they became vested in the British Crown by virtue of the Government of India Act, 1858, and by the Government of the Straits Settlements Act, 1866, which came into force on 1st April, 1867, they were constituted a separate Crown Colony. In 1945 Penang and Malacca were separated from Singapore and became with the peninsular Malay States the Malayan Union which became in 1948 the Federation of Malaya and in 1957 Persekutuan Tanah Melayu.

The question of what is and has been at various times the *lex loci* in all these various political units is not free from difficulty and to some extent is of academic interest only.

The Malay States are inhabited by people who, at any rate since the fifteenth century, are of the Muslim religion and their law is the Mohammedan Law modified to some extent by Malay 'adat though in the latter part of the nineteenth century and in the present century great inroads have been made in that by the reception of English law.

Since the so-called "First Charter" of 1807 (Letters Patent of 25th March, 1807) the *lex loci* of Penang has been the English Law and this has been the case in Malacca since the cession of 1824 and in Singapore at any rate since the "Second Charter" (Letters Patent of 27th March, 1826).

In all these political units, however, there have been for many years many people, notably Chinese, Indian and British, both English and Scots, who while they have made their homes there and acquired domicile there in the modern legal sense have retained much of the way of living and conduct which they or their ancestors brought from the lands of their origin. And from a time which in many cases is impossible of exact determination the Courts have decided questions of status and certain questions such as questions of distribution of estates which are connected with status not in accordance with the *lex loci* but in accordance with what was thought to be the law of the place from which persons of the same sort as the person concerned had come.

In particular, and in accordance with that general policy, the Courts have consistently recognized among inhabitants of Chinese origin the custom whereby a man could enter into a permanent conjugal relationship with a principal spouse called a "t'sai" and then during the existence of that relationship enter into equally permanent relationships with other women known as "t'sip". The Courts have held that though the status of the "t'sai" and the "t'sip" may not be in all respects the same yet each has a definite legal status and that the children of their unions have the status of legitimacy. In particular as regards distribution in the case of intestacy the law has been interpreted to give the female partners to such unions equal rights in the widow's share and to treat all the natural children as children of their common father. That custom may or may not accord with the modern law of China, or indeed with anything that ever has been the law of China, but it is a custom which the Courts have for many years recognized.

In the Straits Settlements the custom was first definitely recognised in 1867 in the case of *Lao Leong An.* [2] In the historical "Six Widows' Case" (*Choo Eng Choon, Choo Ang Chee* v. *Neo Chan Neo & ors.* [3]), it was discussed at great length and upheld. On more than one occasion it has been upheld by the Privy Council as in the case of *Cheang Thye Phin* v. *Tan Ah Loy* [4] where it was said by Viscount Finlay:—

"With regard to Chinese settled in Penang, the Supreme Court recognizes and applies the Chinese law of marriage. It is not disputed that this law admits of polygamy. By a local ordinance the Statute of Distributions has been applied to Chinese successions, and the Courts have treated all the widows of the deceased as entitled among them to the widows' share under the statute."

So far, I do not think I have said anything that is any way controversial as regards the present case, or indeed at all, but it is now of importance to enquire on what grounds the Courts have countenanced this particular Chinese custom.

So far as the State of Johore is concerned there is a great lack of formal authority. Indeed the only reported case is the comparatively recent one of *Yap Kwee Ying* v. *Lai Kim Foh* [5] in which Laville J., a Judge of very long experience in Johore, accepted the practice as something so well settled as to call for no discussion.

It is a matter of history that in Johore in the nineteenth century the immigrant community of people of Chinese origin was growing and it was probably a matter of convenience rather than of anything else to recognise their customs. There was the example of what was happening in the neighbouring island of Singapore, with which in spite of political separation the State was still connected by strong social and economic links, and in the neighbouring Malay States in at least one of which the Ruler had expressly recognised the position of the Chinese (see Perak Order-in-Council No. 23 of 1893). Fundamentally, too, it must be remarked that the Roman or English conception of legalistic sovereignty with its at times apparent lack of tolerance of other laws is very much a modern importation in Asia and that it is the tolerance of an age that is passing that illuminates Articles LVII and LVIII of the First Part of the Law of the Constitution of the State of Johore of 1895.

The English translation of these Articles is as follows:—

"LVII. What is called the 'Religion of the State' for this Territory and State of Johore is the Muslim Religion, and such being the case, the Muslim Religion shall continuously and for ever be, and be acknowledged to be, and spoken of as, the 'State Religion'; that is to say, on no account may any other religion be made or spoken of as the religion of the country, although all other religions are allowed, and are always understood as proper to be allowed, to be practised in peace and harmony by the people professing them in all and every part of the Territory and Dependencies of the State of Johore.

LVIII. All the laws and customs of the country shall be carried out and exercised with justice and fairness by all the Courts of Justice and by all Officers and Servants of the State between all the people of the country and the aliens who sojourn and reside under its protection, whether for a season or for a lengthened period, that is to say, without their entertaining in the least degree more sympathy or regard or partiality towards those who profess the religion of the country, namely the Muslim Religion, or making any difference between those who are the subjects of the State and those who are not."

The point is, perhaps, not of great importance but it should be observed that the foregoing extracts are from an English translation of a document issued in the Malay language by a Malay Ruler who was a Muslim. The word in the original which is here translated as "religion" is "igama" and it is difficult to suppose that a liberty to "practise" a different religion from that of Islam was not intended to include a licence to conform to those rules of the nature of personal law which a Muslim, but not necessarily a non-Muslim, would assume to be dictated by his religion. It is difficult, too, to resist the conclusion that the word "igama" is the same as the Sanskrit "agama" and it is to be observed that the late Sir Monier Monier-Williams in his Sanskrit-English Dictionary gives as one of the meanings of that word "a traditional doctrine or precept" and says it is so used in the laws of Manu and in Maha Bharata.

As regards the Straits Settlements, there is a great deal more material available.

The legal position in the early days of Penang is described in the historic judgment of Sir Benson Maxwell, the learned author of "Maxwell on Statutes", in the case of *Reg.* v. *Willans.* [6]

When Light and his East India Company Marines occupied Penang on the cession of 1786 the island was uninhabited. That is perhaps not altogether true historically but it was the assumption on which the later Charters proceeded and on that assumption there was at the time of the occupation no existing *lex loci.* The Marines came not as settlers but as a garrison. "The bulk of the first settlers were Chinese, Malays and Chulias, who, obviously, could not establish their respective laws in a British possession as the *lex* or the *leges loci;* and the few Englishmen who established themselves here at the foundation of the Settlement, came, not as men assuming the dominion of a desert land, and settling on it as a matter of right, but as strangers permitted as a matter of favour, to dwell in a country belonging to a *quasi* foreign power, with the government of which they had no concern." (p. 68).

"Whatever," continued Sir Benson (at p. 70), "ought, *de jure,* to have been the law of the land when the colony was founded, it is clear beyond all doubt, that for the first twenty years and upwards of its history, no body of known law was in fact recognised as the law of the place. As to the law of England, so far was it from being regarded as the *lex loci,* that it was hardly recognised even as the personal law of its English inhabitants."

It is not necessary to relate in detail the somewhat stormy legal history of these first twenty years of the new Settlement as described in the Historical Introduction to Kyshe's Reports beyond observing that a series of Magistrates were appointed and that the law was administered generally in accordance with the following passage of a report by the Duke of Wellington (then Colonel Wellesley) who visited the island in 1797:— *

"As the inhabitants consist of people of different nations and of different Provinces of those nations, it is advisable to leave them under the direction of the headman of each Province, and to interfere as little as possible in the regulations which may be established by each for the government of his own countrymen. It may, however, be necessary in order to insure the general tranquillity, to have one European Magistrate, who might be at the head of the magistracy of the Island. He should inform himself of the methods of proceeding, and of the laws which bind the Chinese and the Malays, and in cases where either or both are parties, proceed according to the laws of universal and natural justice."

* 1 Ky. ix.

That era came to an end with the First Charter which was granted to the East India Company by George III in 1807. It recited that the Company had obtained Prince of Wales Island by cession from a native prince, that when such cession was made the island was wholly uninhabited but that the Company had since built a fort and town, and that "many of our subjects and many Chinese, Malays, Indians, and other persons professing different religions, and having different manners, habits, customs, and persuasions" had settled there. It made provision for the government of the island and for the administration of justice and, in particular, established a Court of Judicature which was to exercise all the jurisdiction of the English Courts of law and equity "as far as circumstances will admit" and which was also to exercise jurisdiction as an Ecclesiastical Court "so far as the several religions, manners, and customs of the inhabitants ..... will admit."

This Charter was replaced by the Second Charter of 1826 which extended the territorial jurisdiction of the Court to cover Singapore and Malacca and this in its turn was replaced by the Third Charter of 1855 which enabled the Court to be divided into two divisions, at Penang and Singapore. In all three Charters, however, the provisions as to the nature of the jurisdiction of the Court were substantially the same.

Such was the origin of the jurisdiction of what through a series of statutes which it is not necessary to set out in detail here became the Supreme Court of the Straits Settlements and then this Court, at any rate in so far as it exercises jurisdiction in Penang and Malacca, and of the present Supreme Court of Singapore.

I pause here to observe that while the Charters clearly proceed on the assumption that the original settlers were "our subjects" and Chinese, Malays and Indians they make no attempt to define what they mean by Chinese, Malays and Indians. "Our subjects" must, *ex hypothesi*, be taken as meaning persons who were British subjects before they settled on the island but Chinese, Malays and Indians while not defined are clearly regarded as classes of persons differentiated from British subjects and each from the other by reason of their "professing different religions and having different manners, habits, customs and persuasions." These qualities are in effect treated as each included in a single category or combination of qualities which is the attribute of Chinese or Malays or Indians as the case may be and it would therefore seem that the question of whether a particular individual is a Chinese or a Malay or an Indian depends not so much on whether or not he as an individual possesses one or more of the combined qualities as on whether or not he is a member of a class of persons who as a class possess the combination of qualities as a whole. The relevance of that observation will be seen later.

Coming now to the question of law and the way in which the Court regarded the provisions of the Charters so far as they affected the customs and usages of the various classes of people who lived within its jurisdiction, the first case which calls for mention is that of the goods of *Abdullah* [7] which was decided in 1835 by Sir Benjamin Malkin, who was later to become Chief Justice of Calcutta. That was a case in which the Court refused to accept the restrictions placed by the Mohammedan Law upon the power of testing of a Mohammedan. Counsel had contended for an interpretation of the Charter that would give to all the inhabitants the full benefit of their own laws, religions and customs. Sir Benjamin Malkin refused to accept this view and held that the Charter had introduced the law of England. But, he said:—

> "The Charter seems to have intended to give a certain degree of protection and indulgence to the various natives resorting here; not very clearly defined, yet perhaps, easily enough applied in particular cases, but not generally, to sanction or recognise their law."

In the case of *Chu Siang Long*, [8] which was decided in 1843, Sir William Norris referred to the observations of Sir Benjamin Malkin which have been quoted and said, perhaps with a certain lack of consistency, that he had himself "adhered in practice to the same principles, frequently directing the two or three widows of a Mohammedan intestate to rank as one widow, and their several children as one family, in the distribution of the estate."

The next case that calls for consideration is the case of *Reg.* v. *Willans*, *supra*, the date of which is 1859. The subject matter of that case was unimportant and related to some misconduct on the part of a labourer. In his judgment, however, portions of which have already been quoted in discussing the early legal history of Penang, the learned Recorder stated his views on the general question of the reception of the English law and its adaptability to meet the customs of the inhabitants and these views are of the utmost importance because it is in the light of them that, in my view, we must consider the later local cases which will be mentioned and it is these views which in the light of the later decisions of the Privy Council must be accepted as the true foundation of the present state of the law relating to non-Christian marriages.

Sir Benson started from Sir Benjamin Malkin's statement in the case of *Abdullah*, *supra*, that "the introduction of the King's Charter into these Settlements had introduced the existing law of England ..... and had abrogated any law previously existing." He accepted that statement as binding on him but as Sir Benjamin had said that statement was subject to exceptions which he did not define it was desirable to consider what such exceptions or qualifications might be.

He discussed the earlier history of the Settlement and observed (p. 73) that "it must be presumed that the Charter of 1807 was

granted with a full knowledge of this state of things, and was intentionally adapted to it." "The question, to what extent English law became the law of the land is, then, a question of construction rather than of general legal principle, or at least of the one as well as of the other."

He went on:—

"Now, the Charter does not declare, *totisdem verbis*, that that law (i.e. the English law) shall be the territorial law of the Island; but all its leading provisions manifestly require that justice shall be administered according to it, and it alone."

He concluded that in effect the Charter provided for "the exclusion of native law" (p. 76) and after a long examination of local circumstances observed (p. 81):—

"It does not seem to me, then, that the Charter has in any respect modified the law of England by any exceptional adaptation of it to the religions and usages of the East."

He had, however, already observed (p. 80):—

"The law of England, wheresoever administered, respects, either *ex comitate*, or *ex debito justitiae*, the religions and usages of strange sects and nations to the extent to which the Charter requires that they shall be respected."

He later elaborated this passage in connection with marriage by referring to Lord Stowell's views as set out in the cases of *Dalrymple* v. *Dalrymple* [9] and *Ruding* v. *Smith* [10] and Lord Brougham's views as set out in the case of *Warrender* v. *Warrender*. [11]

The foregoing is but a bare and unsatisfactory summary of a judgment which has been for over a century and will long continue to be a monument to the learning and erudition of a very great lawyer. The point, however, which I would emphasise here is that in Sir Benson's view the recognition of such institutions as polygamy and of property rights that might be said to flow from it did not derive from the express provisions of the Charters as to the religions, customs and manners of the people concerned but from the law of England itself and its inherent adaptability to usages far different from those prevailing in England. This conception was reiterated almost a century later in the perhaps old-fashioned words of Barnard J., in the case of *Srini Vasan* v. *Srini Vasan* [12]:—

"To deny recognition of a Hindu marriage for the purpose in hand would, in my opinion, be to fly in the face of common sense, good manners and the ordered system of tolerance on which the Empire is based;"

Sir Benson elaborated his views as to the adaptability of the English law some eight years later in the case of *Chulas & Kachee* v. *Kolson* [13] which was concerned with a plea of coverture set up by a Mohammedan woman. There he said:—

"The question how far the general rules of the law of England are applicable to races having religious and social institutions differing from our own, is of occasional recurrence in this Court, and it is seldom free from difficulty. It has been repeatedly laid down as the doctrine of our law that its rules are not applicable to such races, when intolerable injustice and oppression would be the consequence of their application .....

.....

where our law is wholly unsuited to the condition of the alien races living under it, their own laws and usages must be applied to them on the same principles and with the same limitations as foreign law is applied by our Courts to foreigners and foreign transactions. They must be regarded as persons having foreign domiciles, and governed for many purposes by this law, and as if they were residing among us temporarily."

I now pass to two cases in which Sir Benson dealt with Mohammedan and Chinese marriages.

The case of *Hawah* v. *Daud*, [14] which was decided in 1865, was concerned with the property rights of a Malay wife and there Sir Benson said regarding Mohammedan marriages:—

"To call such precarious unions by the same name as our own marriages was, perhaps, to give one name to very different things. But still, that the Mohammedan marriage was a good marriage in the eye of our law seemed incontestable; at all events it could not be contested here without bastardising the mass of the population."

Then in the case of the goods of *Lao Leong An, supra*, decided in 1867, the claim of a Chinese secondary wife to share with the principal wife the property of her husband who had died intestate was upheld.

"I had to consider this question some years ago in Penang and..... I was of opinion that a second or inferior Chinese wife was to all intents and purposes a lawful spouse and was entitled to share with the first or superior wife in the property of her deceased husband; and it may be as well if I state now the grounds of my opinion. It may seem difficult to apply the English statute of distributions where polygamy is a recognised institution; but this difficulty was long ago solved in this Settlement by holding that where a Mohammedan died intestate leaving two or more wives, they were entitled to share equally among themselves the share which the statute of distributions allots to the widow of a deceased person."

His Lordship went on to discuss the difference between the position of a Mohammedan wife and a Chinese wife and the grounds on which he considered that although the status of a Chinese secondary wife might be different from that of a Mohammedan wife yet that status was the status of a wife and not of a concubine. He said it might be true that in China the inferior wives had no share in the succession of a deceased husband. "But," he concluded (p. 419):—

"This is immaterial for the purpose of the present question. If it were otherwise the first wife would not find it easy, any more than the second, to establish her right to Letters of Administration. The intestate was domiciled in this Settlement, and his personal estate must therefore be distributed according to the law of the Settlement. He had, besides, real estate here and this, independently of his domicile, must devolve according to the *lex loci* ..... The rights of his wives therefore must be determined by our law and not by that of China."

After the case of *Lao Leong An, supra*, in 1867 the general question of Chinese marriages did not arise again till 1908 when it was considered in the case of *Choo Eng Choon, Choo Ang Chee* v. *Neo Chan Neo & ors.* (the *Six Widows' Case*), *supra*.

The deceased whose estate was in question in that case was a Chinese of British nationality domiciled in Singapore. He left six widows whom he had married in accordance with Chinese custom and issue whom he had had by them and it was held that all these were entitled to share in the succession, the widows being entitled to share equally the widow's share under the English Statute of Distributions which was then the law in Singapore.

That was the view of the High Court and of the majority of the Court of Appeal, but the Judges who arrived at that result were not quite unanimous as to the grounds on which it could be supported.

In the High Court, Law Ag. C.J., referred to the case of *Lao Leong An, supra*, which was decided in 1867 and what he understood to have been the practice of the Court since the time of that decision. He went on to say (at p. 152):—

"For more than forty years it seems to me the Courts here have been treating Chinese marriages as polygamous, and though I do not know if the matter has ever been thoroughly argued out before, it is to my mind doubtful whether the question is any longer an open one, at any rate in a Court of first instance."

Later he considered the terms of the Charter of 1855 which in his view were in force at the material date and in particular the provision that the Court should have and exercise jurisdiction as an Ecclesiastical Court "so far as the several religions, manners and customs of the inhabitants of the said Settlements and places will admit." Here he observed (at p. 158):—

"It seems to me under these words of the Letters Patent the Court in the exercise of its ecclesiastical jurisdiction should recognise polygamous marriages in the case of any class of inhabitants amongst whom such marriages are shewn to be in accordance with their own laws, manners and customs."

In the event he came to the very guarded conclusion (p. 161):—

"On the whole, then, I think that on the authorities, either in virtue of the Letters Patent or otherwise, the Court here must recognise polygamous marriages if such are valid according to the religions and usages of the married parties."

In the Court of Appeal Sercombe Smith J. dissented from this view. He spoke with the authentic voice of the Barons of Merton and was for having no mucking about with the laws of England. "*Nolumus leges Angliae mutare.*" His reasoning, however, though of much cogency does not assist greatly in the present case for it follows a line that has little in common with the previous and subsequent current of thought with which we are concerned here.

The majority of the Court (Hyndman-Jones C.J., and Braddell J.) took the view that the decision in the case of *Lao Leong An* was correct and should be followed but they dissented from the views of Sir Benson Maxwell in the earlier case of *Reg.* v. *Willans*. This dissent was expressed at length by Braddell J. Sir Benson had expressed the opinion that in recognising Chinese marriages the Court had done so not because the Charter demanded an exceptionally indulgent treatment of the question but because such indulgence was dictated by a principle inherent in the law of England itself. The view of Braddell J. was as follows (p. 218):—

"Now it may be perfectly true to say that the Charter does no more than adopt a principle in agreement with the law of England, but it does nevertheless expressly declare that the Court of Judicature shall have and exercise jurisdiction as an Ecclesiastical Court so far as the several religions and customs of the inhabitants of the Settlements and places will admit.

I am unable to regard this declaration in the light of being surplusage and intended to effect nothing more than if it simply declared in general terms that the Court of Judicature should have and exercise jurisdiction as an Ecclesiastical Court according to the law of England without more."

He then proceeded to examine the question in the light of the wording of the Charter and by a process of reasoning, with which assuming the correctness of the premises I would with respect express myself as in entire agreement, arrived at the same result as that at which Sir Benson had arrived starting from altogether different premises.

There thus arose a difference of opinion that was not to be settled for another twenty years. It was agreed, except by Sercombe Smith J., that Chinese customary marriages, though polygamous, were valid and gave succession rights both to the wives and to the issue. On the one hand, however, it was said that the recognition of this principle flowed from the inherent nature of the English law. This of course had much in common with the views expressed by James and Cotton L.JJ., in the case of *Goodman's Trusts*. [15] On the other hand it was said that the recognition flowed not from the law of England but from an exception to that law created by the express words of the Charter.

On the first occasion after the *Six Widows'* Case when the matter came before the Privy Council the difference was not resolved.

In the case of *Cheang Thye Phin* v. *Tan Ah Loy, supra*, the Privy Council, in 1919, held in effect that the *Six Widows' Case* was rightly decided but their Lordships did not discuss the course of reasoning which led the majority of the Court of Appeal to their decision. The correctness or otherwise of that course of reasoning was not settled until what is known as the *Petronella* litigation some years later. Before, however, coming to the *Petronella* cases it is necessary to go back for some years before the *Six Widows' Case*.

In the year 1869 Sir Benson Maxwell had held, in the case of *Choa Choon Neoh* v. *Spottiswoode*, [16] that the English statutes relating to superstitious uses and to mortmain were not part of the law of the Settlements but that the rule against perpetuities was to be considered part of it. In the course of his judgment he made the following observations (at p. 221):—

"In this Colony, so much of the law of England as was in existence when it was imported here, and as is

of general (and not merely local) policy, and adapted to the condition and wants of the inhabitants, is the law of the land; and further, that law is subject, in its application to the various alien races established here, to such modifications as are necessary to prevent it from operating unjustly and oppressively on them. Thus in questions of marriage and divorce, it would be impossible to apply our law to Mohammedans, Hindoos, and Buddhists, without the most absurd and intolerable consequences, and it is therefore held inapplicable to them."

Some three years later that decision was followed by Hackett J., in the case of *Ong Cheng Neo* v. *Yeap Cheah Neo & ors.* [17] In that case there was an unsuccessful appeal to the Privy Council. In the course of their judgment (*per* Sir Montague Smith) their Lordships considered the terms of the Charters and concluded (1 Ky. 343-4; L.R. 6 P.C. 393):—

"With reference to this history, it is really immaterial to consider whether . . . . . Penang, should be regarded as ceded or newly-settled territory, for there is no trace of any laws having been established there before it was acquired by the East India Company. In either view the law of England must be taken to be the governing law, so far as it is applicable to the circumstances of the place, and modified in its application by these circumstances. This would be the case in a country newly settled by subjects of the British Crown; and, in their Lordships' view, the charters referred to, if they are to be regarded as having introduced the law of England into the colony, contain in the words 'as far as circumstances will admit', the same qualification. In applying this general principle, it has been held that statutes relating to matters and exigencies peculiar to the local condition of England, and which are not adapted to the circumstances of a particular colony, do not become a part of its law, although the general law of England may be introduced into it."

They then went on to agree with what had been decided by Sir Benson Maxwell in the case of *Choa Choon Neoh* v. *Spottiswoode, supra,* and said (at p. 396) that it appeared to them that in that judgment "the rules of English law and the degree in which in cases of this kind, regard should be had tc the habits and usages of the various people residing in the colony are correctly stated."

As was, however, pointed out by Sir Theodore Ford some five years later in 1877 in the case of *Khoo Tiang Bee* v. *Tan Beng Gwat* [18] this judgment left open and did not finally settle the question as to the true ground on which the usages of the inhabitants were to be accepted. What he said was this (p. 415):—

"Whether modifications in favour of the habits and usages of foreign races dwelling here are to flow from the express provisions to that end in the Charter itself, or to follow as the sequence of the introduction of English law under the principle of comity, as laid down in *Regina* v. *Willans*, was not a question directly before their Lordships, and I gather from the language of their judgment (p. 393) that their Lordships considered such modifications might not only flow from the language of the Charter, but even a third source, viz., that principle of law which attached to subjects of the British Crown settling in a new country such modifications in the law of their original domicile as the circumstances of the place required."

He then proceeded to decide the actual question before him and held that the adopted son of a Chinese intestate had no right to share in the intestate's estate.

As has been pointed out the decision of the Court of Appeal in the *Six Widows' Case* was based on the express provisions of the Charters and, as has been pointed out, the question of whether they were right as to the effect of the Charters was not finally decided until the end of the protracted *Petronella* litigation.

The facts of these cases, so far as they are relevant to that purpose, are no longer in dispute. Briefly they were as follows.

Petronella Baptist (later Gaudoin, later Cornelius, later Phipps) was a Eurasian woman domiciled in Penang who throughout her life was a Roman Catholic. In 1847 she was married by a form of Christian marriage to one Gaudoin. About 1853, while Gaudoin was still alive, she formed some sort of association with one Khoo Thean Tek, a Chinese domiciled in Penang who already had a Chinese principal wife and also had secondary wives. As a result she gave birth in 1854 to a son Khoo Hun Tee of whom Khoo Thean Tek was the father. Petronella's association with Khoo Thean Tek probably came to an end in 1855 and certainly ended before 1861 when, Gaudoin being dead, she married one Cornelius. Later Khoo Hun Tee who was her son by Khoo Thean Tek had a son and Khoo Thean Tek himself died in 1890 leaving a very large estate on a number of settlements in the administration of which the question arose as to whether Khoo Hun Tee was one of his legitimate sons.

The proceedings commenced in 1923, after the death of Khoo Hun Tee, by an originating summons in which Sproule J. directed an enquiry on a number of matters including the question of whether Khoo Hun Tee was a legitimate son of Khoo Thean Tek. That order was varied by the Court of Appeal but not in any way that affected the question of the legitimacy or the enquiry as to it. On the enquiry being held the Registrar certified that Khoo Hun Tee was not a legitimate son of Khoo Thean Tek. Against that finding Khoo Hooi Leong, one of the sons of Khoo Hun Tee, appealed and his appeal eventually came to the Privy Council (*Khoo Hooi Leong* v. *Khoo Hean Kwee* [19]).

The Privy Council took the view that ultimately the appellant's rights depended on the question of his father's legitimacy and that in its turn depended mainly on the question of whether or not his paternal grandmother (Petronella) became the secondary wife or "t'sip" of his grandfather. They took the view that, for reasons with which we are not concerned here, he had not had a proper chance of laying his case before the Courts and that the matter should be sent back for the enquiry as to his legitimacy to proceed.

The enquiry proceeded and the Registrar found that Khoo Hun Tee was a legitimate son of Khoo Thean Tek. That finding was considered by Sproule J., in the case of *Khoo Thean Tek's Settlements.* [20]

The Registrar had found that Petronella was a lawful secondary wife of Khoo Thean Tek but that even if she were not Khoo Hun Tee had been legitimised by subsequent recognition by his father and his father's family.

With the first of these conclusions Sproule J., disagreed on the ground that at the material times Petronella was not *soluta* because she was married to Gaudoin and her marriage with him had not been dissolved.

With regard to the Registrar's second conclusion, which was to the effect that Khoo Hun Tee had been legitimised by subsequent recognition, Sproule J. thought that on the evidence before him as to Chinese custom such recognition would have been sufficient in China to confer the status of legitimacy. He was of the opinion, however, that the question had been long concluded by the views of Sir Benson Maxwell in the case of *Reg.* v. *Willans, supra.* On this he said, and his words are of importance (at p. 184):—

"The learned Recorder found, then, that the Charter in no respect modified the law of England by any exceptional adaptation of it to the religions and usages of the East. A Chinese marriage, celebrated according to the religious ceremonies of the parties, is valid here, not because the Charter makes it so, but because the law of England recognizes it. The general rule of English law is that the validity of a marriage is to be determined by the law of the place where it is celebrated. Where the law of the place is inapplicable to the parties, by reason of peculiarities of religious opinions and usages, then the validity of the marriage depends on whether it was performed according to the rites of their own religion or custom."

He then referred to Sir Benson's views on the subject of adoption and the rights of adopted children among the Chinese and said that it had been settled law since his day "that adopted sons of Chinese have no status of legitimacy in these Settlements and take no share in the intestate estate of their adoptive father, although in China and by Chinese custom they are given the same status as natural and lawful sons." He did not refer to the views on the question expressed by Sir Theodore Ford in the case of *Khoo Tiang Bee* v. *Tan Beng Gwat, supra,* although that case was relied on later in the Court of Appeal by Stevens J., but he finally disposed of the question of legitimation by subsequent recognition as follows (p. 186):—

"That is a conception unknown to the common law of England. It is also necessarily subversive of the policy of that law, since, when examined closely, it would enable legitimization, merely by reason of such recognition, of the offspring, for instance, of one casual act of adultery with a married woman, who was not, and might never thereafter be, *soluta.* It also offends by reason of the custom being restricted to male children."

Khoo Hooi Leong again made the long and expensive journey to the Court of Appeal and to the Privy Council and again he made it without success. [20a]

Lord Russel of Killowen referred to the judgment of Lord Phillimore in the 1926 appeal in which his Lordship had spoken of the *Six Widows' Case* as deciding that a "t'sip" is entitled to take a widow's share in the estate of her deceased husband, she being equivalent for this purpose to a "t'sai"; and following this doctrine to its logical conclusion, that the children of a "t'sip" were entitled to inherit equally with the children of a "t'sai" and said that the judgment in that case had been "inferentially" affirmed by the Board. He had already said that in the opinion of their Lordships it was impossible to find in the present case that Petronella was a lawful secondary wife of the appellant's grandfather and he went on to agree with the views of Sproule J., on the question of subsequent legitimation by recognition and observed that in any event "by the law operative in the Colony the adopted son of a Chinese intestate has no right to share in the intestate's estate." He concluded with the following passage ([1930] S.S.L.R. at p. 138):—

"The modifications of the law of England which obtain in the Colony in the application of that law to the various alien races established there, arise from the necessity of preventing the injustice or oppression which would ensue if that law were applied to alien races unmodified. That was the view expressed by Sir Peter Maxwell C.J. in *Choa Choon Neo* v. *Spottiswoode*; and this Board, in *Yeap Choon Neo* v. *Ong Cheng Neo,* stated that in Sir Peter Maxwell's judgment 'the rules of English law, and the degree in which, in cases of this kind, regard should be had to the habits and usages of the various people residing in the Colony are correctly stated.'

From the above mentioned necessity arises the recognition by the Courts of the Colony of polygamous marriages among the Chinese, and, as a logical consequence, the recognition of the legitimacy of the offspring (whether male or female) of such marriages.

Their Lordships, however, are unable to find any grounds which would justify such a modification of English law as to treat an illegitimate natural son as legitimated by the mere fact of subsequent recognition. Legitimation of a child, whose parents are not husband and wife, is unknown and repugnant to the common law of England, and no hardship (much less injustice or oppression) need result from a refusal to admit a modification in this respect of the English law in its application to Chinese."

Thus the controversy of almost a century was resolved. In particular, the conclusion of the *Six Widows' Case* in favour of the lawfulness of polygamous Chinese marriages was approved but the reasoning which led to that conclusion was disapproved. Such marriages were recognised as lawful not because of any exception to the general law of England created by the express words of the Charters but because that law itself demands its own modification so as to prevent "the injustice or oppression which would ensue if that law were applied to alien races unmodified." In other words the English law is to be modified not by reason of the religious beliefs of any particular individual but because it would be unjust to apply it to him in this country as a member of the race to which he belongs.

Now, this result may present difficulties particularly from the point of view of scientific jurisprudence. It may produce the apparent consequence that in certain cases a man's personal law is to derive not from his own domicile

but from the domicile of his ancestors. It may be in some apparent conflict with the view expressed in the case of *Abd-ul-Messih* v. *Farra, supra,* that a similar indulgence was extended to certain castes and creeds in India because their rules and customs "are an integral part of the municipal law." It may have produced apparent anomalies of the sort described in the earlier Federated Malay States case of *Yap Tham Thai* v. *Low Hup Neo.* [21] It may well be that at any rate until fairly recently the law of China gave no widow any specific share in the *corpus* of the estate of her deceased husband but only gave her a right of maintenance by the sons.

All that is beside the point. The result is there and must be accepted and I do not think it is an unfair gloss upon it to say that if irrespective of their individual religious beliefs a Chinese man and one or more Chinese women were to enter into connubial associations in accordance with the customs of their race and proceed to beget children relying on a century's recognition by the Courts of the lawfulness of such associations and of the rights of the female spouses and the offspring to share in the succession to the husband and father, where he has not seen fit to make some other *post mortem* provision by will, then if the law were to refuse to recognise such associations there would be both injustice and oppression. And this is a consequence which the law will refuse to bring about.

All marriage arises from a contract to enter into the marital association but the consequences which arise once that association is entered into are determined by the law and not by any independent stipulations by the parties. When a Chinese man enters into such a relationship in accordance with Chinese custom he must be held to have intended all the consequences of such an engagement and in particular if he makes no attempt to deal with his succession by will then he must be presumed to have intended that his estate will be distributed as his connubial partner or partners would have anticipated it would be distributed, that is to say in accordance with such of the provisions of the law relating to the distribution of intestate estates as are applicable where there has been such a relationship. If the Courts did not give effect to that, again injustice and oppression would be the result.

Having arrived at that point it becomes necessary to approach the question of whether the freedom of a Chinese man to enter into such associations which will have such consequences is in any way affected by the statute law relating to Christian marriage if he is a person professing the Christian religion.

Before approaching that question I would with great respect, but with some force, dissent from the finding of Neal J., that in the present case the deceased was at any material time a person professing the Christian religion.

The deceased married Madam Kong in Singapore in 1932. He married Madam Yong in Johore in 1939 and he married Madam Chan in Johore in 1954. I do not think it is in dispute at this stage that in each case the requirements of Chinese custom were complied with and the union was in the eyes of Chinese custom a valid polygamous marriage. It was argued, however, that at the times at which the deceased entered into each of these unions he was a person professing the Christian religion, although rather curiously no attention has been paid to the fact that Madam Yong stated in her affidavit that at the time of her marriage she was a member of the Church of England and since the death of the deceased had become a member of the Roman Catholic Church and so there were extremely strong grounds for saying that at the time of her marriage, whatever was the position regarding the deceased, she was a person professing the Christian religion.

Neal J. based his finding that the deceased was a person professing the Christian religion on the uncontradicted evidence that he was baptised as a Roman Catholic and conformed to the observances of the Roman Catholic Church regularly until he attained the age of about 23, that is about 3 years before contracting his union with Madam Kong. Thereafter he attended the Roman Catholic Church only on occasions of religious festivals such as Christmas, Easter and All Souls' Day. His children, at least those by Madam Yong, who it is to be remembered is and was herself a Christian, were baptised in the Roman Catholic faith. In the room occupied by him and Madam Yong there was an altar on which religious statues were displayed. All his motor-cars bore emblems of St. Christopher and while his body was awaiting burial prayers were said over it by Roman Catholic priests. There was, too, evidence of a rosary, which may or may not have been his property, being put in his coffin prior to burial. On the other hand there was evidence that a priest refused to allow his dead body to be brought into the Roman Catholic Church at the place where he died.

Now all these things may or may not amount to professing the Christian religion, although when it is remembered that at any rate during the later years of his life he was living in contemporaneous connubiality with three different women, the fact of his profession might not have been so readily accepted by His Holiness the Pope or His Grace the Archbishop of Canterbury as it was accepted by the learned trial Judge. For myself I would content myself with observing that I do not think the evidence did make out a profession of the Christian religion and I must record my dissent on the point from the opinion of the learned trial Judge in case it should be said at any future stage that there had been concurrent findings of fact upon the point. After all, Christ Himself said, and surely on such a point His voice should be treated as of some authority even in a Court of Law, "by

their fruits ye shall know them" (Matthew VII, 20).

There may, of course, be some question as to whether historically speaking the practice of polygamy is necessarily inconsistent with the profession of the Christian religion. There may be room for doubt as to the attitude of the early Church and we are told as a matter of history that Luther and Melanchthon, who at any rate regarded themselves as Christians, expressed approval of the conduct of Philip the Magnanimous, the landgrave of Hesse, in taking a second wife though they made it clear that they expressed their approval as friends and not as doctors of theology. As, however, the present deceased in fact had his religious instruction from the Roman Catholic Church in the twentieth century it is highly improbable that he nourished any historical or philosophical doubts on the question and for myself I would content myself with observing that I do not think the evidence made out that at the time of any of his marriages he was a person professing the Christian religion.

The two statutes upon which the deceased's father relies to bastardise his son's children and to denigrate the women whom his son took as his wives are the Christian Marriage Ordinance of the Straits Settlements (Cap. 82 in the 1936 Consolidation) and the Christian Marriage Enactment of the State of Johore. Both of these statutes have now been repealed and replaced by later legislation. The provisions of both statutes are in all material respects the same, the Johore Enactment being clearly an importation from the Straits Settlements law to meet local needs. In the circumstances it will be sufficient to deal with the Straits Settlements Ordinance only observing that what is said regarding its interpretation is equally applicable to the Johore Enactment.

It must be remembered that until 1st April, 1867, which was the date on which the Government of the Straits Settlements Act, 1866, came into force, the Straits Settlements were legally part of India.

In India, prior to 1818, there was no statute law relating to the solemnisation of Christian marriages. Such marriages were, in fact, generally solemnised by clergymen of various Christian denominations and so far as clergymen of the established Church of England were concerned no doubt would seem to have arisen at any time as to the validity of marriages solemnised by them.

The Indian Marriage Act of 1818 (58 Geo. III c. 84) only dealt with the solemnisation of marriages by Ministers of the Church of Scotland who were East India Company chaplains. It was followed by the Indian Marriage Act of 1851 (14 & 15 Vict. c. 40). That Act applied to India provisions similar to those enacted for England in the Marriage Act of 1823. It provided for the solemnisation of marriages between "persons professing the Christian religion" by Registrars to be appointed by the Government, but did not deal with marriages performed by Ministers of Religion. The necessary local legislation to give effect to this Act was enacted by Indian Act No. V of 1852. This legislation was supplemented so as to govern the solemnisation of marriages by Ministers of Religion by Act No. XXV of 1864 which was replaced by Act No. V of 1865, section 9 of which provided that marriages between persons professing the Christian religion solemnised otherwise than in accordance with its provisions should be null and void.

In India all the previous Acts were replaced by the Christian Marriage Act of 1872 (No. XV of 1872) and in the Straits Settlements they were repealed and replaced by the Christian Marriage Ordinance of 1898 which became Cap. 82 in the 1936 Consolidation.

The title of the Ordinance states that it is "to consolidate the law relating to Christian Marriage." The Ordinance contains elaborate provisions for the solemnisation of marriages by Christian Ministers of Religion of various denominations in accordance with the rituals of their respective Churches and by Marriage Registrars to be appointed by the Governor. It deals with such matters as the production of any necessary consents, the giving and publication of notices, the times and places at which marriages may be solemnised and the form of their solemnisation when performed by the Registrar. Section 3 provides that "every marriage between persons, one or both of whom is or are a Christian or Christians" (that is by the definition section 'persons professing the Christian religion') which is solemnised otherwise than in accordance with the provisions of the Ordinance "shall be void." The only other provision that calls for mention here is that of section 71, which reads as follows:—

> "Nothing in this Ordinance shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into."

Before proceeding to a closer examination of the Ordinance it will be well to recollect certain matters of general principle in relation to the law regarding marriage.

Marriage is a union of a man and a woman which the law recognises but different laws recognise different forms of union and the same law may recognise different forms of union which have different legal consequences and different durations. There is Christian or monogamous marriage defined in the classical words of Lord Penzance in the case of *Hyde* v. *Hyde* [22] "as the voluntary union for life of one man and one woman to the exclusion of all others." There is the Chinese polygamous marriage as recognised by the law in this country where the union is voluntary and is normally for life but which so far as the man is concerned does not exclude other unions. As was pointed out by Lord Brougham in the case of *Warrender* v. *Warrender, supra*, a Christian or monogamous marriage and a polygamous marriage as recognised in

countries where polygamy is lawful are entirely different things. Much the same thing was said by Stirling J., in the case of *Bothell* v. *Hildyard* [23] where he was concerned with a potentially polygamous marriage contracted by a man domiciled in England with a locally domiciled woman in a place where polygamous marriages were recognised. He said that such a marriage was "essentially different from that which bears the same name in Christendom" and went on to hold that it was not a valid Christian marriage in the eyes of the law of England. He did not, however, say that the polygamous marriage was invalid as such but declared there was no valid subsisting marriage on the ground that the husband was domiciled in England and was therefore incapable of contracting such a marriage. As was said by Lord Phillimore in the first *Petronella case* (at p. 543) a Chinese customary marriage is "a special kind of union."

Again, we must always recognise the distinction between those portions of the law which relate to what might be called the essence of the marriage, such matters as capacity to enter into it and the legal consequences which flow from it, and on the other hand those portions of the law which govern the forms of entering into it. This distinction is illustrated in the following passage from the judgment of Lord Campbell in *Brook* v. *Brook*:— [24]

> "But while the forms of entering into the contract of marriage are to be regulated by the *lex loci contractus*, the law of the country in which it is celebrated, the essentials of the contract depend upon the *lex domicilii*, the law of the country in which the parties are domiciled at the time of the marriage, and in which the matrimonial residence is contemplated. Although the forms of celebrating the foreign marriage may be different from those required by the law of the country of domicile, the marriage may be good everywhere. But if the contract of marriage is such, in essentials, as to be contrary to the law of the country of domicile, and it is declared void by that law, it is to be regarded as void in the country of domicile, though not contrary to the law of the country in which it was celebrated."

In other words the law of the marriage is one thing and the law governing its solemnisation is another thing and a different thing.

Returning now to the Straits Settlements Christian Marriage Ordinance, this purports to consolidate the law relating to Christian marriage and in my view for reasons which were stated at length in the case of *Dorothy Yee*, [25] which was a case relating to the jurisdiction of the Court in divorce, the Christian marriage in question means monogamous marriage. The Ordinance deals not with marriage in general but only with the single definite type of relationship which can be described as Christian or monogamous marriage. It has nothing to do with any other type of relationship which is known by another name. It has nothing whatsoever to do with the Muslim type of polygamous marriage nor with the Chinese type of polygamous marriage. It deals with monogamous marriage and monogamous marriage only.

Again it is to be observed that, although the Ordinance purports to deal with Christian marriages, the marriages of which it regulates the solemnisation are not confined in terms to marriages between persons who are Christians in the ordinary sense of persons accepting the theological beliefs and the moral precepts generally associated with Jesus Christ. It is true that, in practice, parties would not have their marriages solemnised under the Ordinance unless they accepted so much of the modern Christian teaching as says that marriage is essentially monogamous. Nevertheless it is clear that there is nothing whatsoever in the Ordinance to prevent two atheists or two Jews having their marriages solemnised under it by a Registrar.

Again it is to be observed that from beginning to end there is not a word in the Ordinance which relates to what may be called the substantive law of marriage. There is not a word in it which relates to capacity. If an enquirer wishes to know, for example, what are the prohibited degrees of consanguinity or what is the minimum age for marriage he must look for the answer elsewhere. The only criminal sanction for bigamy, the essence of which in this country is the contracting of a marriage which is void by reason of the existence of a previous marriage, is to be found not in the Ordinance but in the Penal Code. Indeed the Ordinance disclaims *in gremio* any intention that it should affect the substantive law for section 71 says that nothing in it is to be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

If the parties are forbidden to enter into any particular marriage by the law to which they are subject, which in that connection is the law of their domicile, as for example where they are within the prohibited degrees of relationship, compliance with the provisions of the Ordinance as to the form of solemnisation of the marriage will not serve to make it valid.

Yet again Part VII (sections 53 to 63) creates a great number of criminal offences and an examination of these shows that everyone of them is in some way connected with the previous provisions relating to the solemnisation of marriage.

From the foregoing it is clear that the whole object, purpose and scope of the Ordinance is to provide a code of law governing the solemnisation of Christian or mongamous marriages and the true effect of section 3 is clearly to avoid *as such* any purported Christian or monogamous marriage not solemnised in accordance with the provisions of the Code. It has nothing whatsoever to do with such matters as capacity to marry nor, what is more important for the purposes of the present case, does it affect in any way the capacity of any individual, which he otherwise enjoys, to enter into a marital relationship of some other sort. In particular, coming back to what has been said regarding Chinese

polygamous marriages, it would in my view be impossible to read into the Ordinance anything which would forbid a Chinese to enter into the type of matrimonial relationship which, as has been seen, is open to the members of the community to which he belongs. Still less is there to be read into it anything that would invalidate any such relationship when freely and voluntarily and properly entered into.

I am, of course, well aware that this is contrary to the view of Sir Charles Murray-Aynsley in the case of *In re Henry Lee Fow Lee* [26] where he held that where a woman had gone through a form of marriage with a Chinese man domiciled in Singapore who was a Christian otherwise than in accordance with the Ordinance the marriage was invalid. Reluctant as I am to differ from a Judge whose reputation stands so high in our legal history, I feel compelled to do so and I am bound to observe that in the first place his Lordship gave no reasons for his opinion and in the second place it would appear that in the case the question was not very thoroughly discussed.

On the other hand, I am fortified in my own view by other sources of authority.

In the first place there is the following passage from the judgment of Lord Phillimore in the first *Petronella case, supra* (p. 543). At this stage of the *Petronella* litigation it had been thought that if Petronella was in fact a Christian that fact would render her incapable of becoming a second and secondary wife of a Chinese. But said Lord Phillimore:—

"Their Lordships think that this view requires reconsideration. To begin with, as counsel for the appellant pointed out, the fact that the woman was a Christian at the date of the deed does not make it certain that she was one when the child was procreated. But there are other considerations. The learned Judges seem to have taken the view that as the lady was a Christian the Chinese law of marriage would not apply, and that as the union was polygamous the Christian Marriage Act would not apply.

But it is to be remembered that this is a special kind of union. As the Supreme Court decided, and as this Board decided in the case already mentioned, there need be no ceremony. If consent is enough it is not easy to see why a Christian woman should be held incapable of consent. True her religion forbids a polygamous union, but it also prohibits illicit cohabitation. No question of the law of the Straits Settlements as to Christian marriages arises.

If the woman be free to contract marriage, *soluta*, and the man according to his personal law is also free, *solutus*, and the particular class of marriage or union is in the abstract recognised by the law of the land, it may well be that the religious obstacle is no bar."

That passage, of course, is spoken *obiter* and it is not clear whether his Lordship when he spoke of the "Christian Marriage Act" had in mind the Indian Act of 1865, the Indian Act of 1872 or the Straits Settlements Ordinance of 1898. Clearly, of course, none of these statutes was in force at the date of Petronella's alleged marriage, which was about 1853. But even if his Lordship was mistaken on this point that consideration does not detract from the value of his opinion.

Then there is the case of *Chia Teck Leong & Ors.* v. *Estate and Trust Agencies (1927) Ltd.* [27] In that case Horne J. was concerned with the validity of the marriage of a Eurasian Roman Catholic woman who became the secondary wife of a Chinese domiciled in Singapore in 1889 when the Indian Marriage Act of 1865 was in force. That Act was similar to the later Indian Act of 1872 and the Straits Settlements Ordinance of 1898 and provided in terms (section 9) that marriages between persons professing the Christian religion solemnised otherwise than in accordance with its provisions should be null and void. Horne J. upheld the validity of the alleged marriage. He referred to the English cases of *Chetti* v. *Chetti* [28] and *Anwarduddin* [29] and pointed out that in England there is nothing to prevent a person whose religion permits or involves polygamy entering into a monogamous marriage in England to which the incidents of a monogamous marriage necessarily attach. In the event he arrived at the following conclusion:—

"This is a country of mixed population and marriages between persons not of the same race are certainly not rare events. Can it be said that the Indian Marriage Act renders such a union, if one party is a Christian, null and void unless in the form provided by the Act? To do so would necessitate giving a very extended meaning to the word 'marriage'. I do not think it would be right to give a universal meaning to the word 'marriage' so as to include within it a status based on polygamy, especially in an enactment dealing with form and registration of Christian marriages, when under the local law both polygamous and monogamous marriages may be valid for the purpose of establishing the legitimacy of offspring and the consequent rights of succession to property. All that the Act or the Ordinance, in my opinion, provides is that if the parties desire that their union shall afterwards be recognized as a valid Christian marriage, so that their matrimonial rights and the legitimacy of their offspring may be decided according to that law, they must have their contract solemnised in the proper form before the persons designated by the Act or Ordinance and registered in accordance therewith."

Finally, there are certain decisions of the Indian Courts which are of value because the statute which we are considering comes from India and because in that country questions of personal law are of very great importance. As Sir Henry Mayne has said ("Hindu Law and Usage", 9th Edn., at p. 54): "In India there is no *lex loci*, every person being governed by the law of the personal status." It is true that in that country there has been comparatively little litigation involving the interpretation of the Christian Marriage Act but such litigation as there has been shewn a considerable unanimity of judicial opinion except on the point which does not concern us greatly here, as to how far a person can by changing his religion change his status and so change the personal law to which he is subject.

In the Madras case of *Kolandaivelu* v. *Dequidt* [30] the actual question for decision was whether a Hindu by religion who performed a marriage according to the Hindu mode between two persons one of whom was a Christian committed the abetment of an offence under section 68 of the Indian Act (corresponding to section

55 of the Straits Settlements Ordinance) which makes it an offence to solemnise or profess to solemnise a marriage contrary to the provisions of the Act. The Court followed previous decisions of the Madras Court and answered the question in the affirmative. In doing so, they observed (at p. 1039): "The general effect of the Act is ..... to require that every marriage where one of the parties is a Christian, must as a condition of validity be solemnised in one of the prescribed forms." They went on, however, to observe, although the logical sequence is not easily observable: "The Act however is only concerned with the forms in which the marriage is to be solemnised, and does not deal with objections to the validity of the marriage."

That case was later discussed and certain of its conclusions (which do not affect the present case) dissented from by Walsh J., in the later Allahabad case of *Maha Ram* v. *Emperor*. (31)

In that case the appellants had also been convicted for offences in contravention of section 68 of the Indian Act. The alleged offences arose out of the marriage of a young man who was said to be a Christian which had been solemnised according to the rites of a non-Christian sect. In quashing the convictions Knox J. based himself on the ground that the young man in the case was not a "person professing the Christian religion."

Walsh J. agreed that the young man was not a "person professing the Christian religion." He went on, however, to examine the scope and object of the Act. He examined the legislative history of the subject and said that that history showed that "doubts had arisen as to the validity of certain marriages" and that the Act was clearly intended "to facilitate such marriages and to validate them and at the same time to guard them by strict requirements." He went on to observe (p. 172):—

> "The object of the Act is not to prevent people marrying as they wish, but to enable them to protect themselves and their posterity by a lawful and binding marriage if they wish to be married as Christians. The Act is to be called the Indian Christian Marriage Act, and in my opinion, it deals with Christian marriages and Christian marriages alone. In future such marriages can only be lawfully effected under this Act. If they are not solemnized by one of the persons described in section 5, they are made void by section 4. The Act does not prohibit even a professing Christian from marrying otherwise than under the Act if he wishes to do so. We therefore start with this that there is no express prohibition preventing a professing Christian from doing violence to his faith and marrying a non-Christian by a non-Christian ceremony. His marriage may not be valid by English law as a Christian marriage in India, but it is not forbidden to him."

He found support for this view in an analysis of Part 7 of the Act which deals with penalties and showed that such penalties were directed against acts done in pretended pursuance of the Act in relation to a purported marriage "which probably would, and certainly might, render the whole proceeding invalid." On this basis he proceeded to express disagreement with much of the reasoning in the two Madras leading cases of *Queen-Empress* v. *Paul* (32) and *Kolandaivelu, supra*.

The Calcutta case of *Lopez* v. *Lopez* (33) was not directly concerned with the interpretation of the Indian Marriage Acts but with the validity of a marriage between a man and his deceased wife's sister, both parties being Roman Catholics domiciled in India, and it was held that the prohibited degrees for the parties were not the degrees prohibited by the law of England but those prohibited by the customary law of the class to which they belonged, which was the law of the Roman Catholic Church as applied in India. The Court made it clear, however, that that result did not depend in any way on the provisions of the legislation relating to the solemnisation of Christian marriages in India of which they examined the history at length. With regard to the Act of 1865 they said (at p. 728):—

> "This Act had certainly no tendency to impose the English law on persons not previously subject to it; the object was to avoid doing so."

And again with regard to the Act of 1872 they said (at p. 729):—

> "There can be no doubt as to the object of the changes made by this Act; the object clearly was to secure that there should be nothing in the rules as to the celebration of Christian marriage tending to indicate, or suggest, that any particular rule as to prohibited degrees applied to any particular marriage."

Then there is the Bombay case of *Saldanha* v. *Saldanha* (34) where it was held that a marriage between two Roman Catholics domiciled in India which was solemnised by a Registrar of Marriages in accordance with the provisions of the Act of 1872 was valid. With regard to the Act, Blackwell J. said (at p. 303):—

> "The whole scheme of the Act of 1872, in my judgment, indicates that it is an Act dealing with the forms of solemnisation of marriage."

He then went on to refer to the passages from the Madras case of *Kolandaivelu* and the Calcutta case of *Lopez* which have already been quoted. Kemp J. observed (at p. 316):—

> "The Act itself was not concerned with anything but the form of solemnisation. This is clear from the preamble."

We thus have expressions of judicial opinion from each of the four largest jurisdictions in India that the Indian Act of 1872 was concerned, and concerned only, with the forms of celebration of marriage and the effect of that opinion can best be expressed in certain words of Stirling J., in the English case of *De Wilton* v. *Montefiore*. (35)

In that case it was held that a marriage solemnised abroad according to Jewish rites between a niece and her maternal uncle both being of the Jewish faith but both being British subjects domiciled in England was invalid in England though valid by the Jewish law. The ground of the decision was that the capacity of the parties to marry was governed by the law of their domicile which was in England and the

English law forbade such a marriage. An argument, however, had been advanced in favour of the marriage to the effect that it was valid by reason of the saving provisions in the Marriage Acts of 1836 and 1840 permitting persons professing the Jewish religion to "continue to contract and solemnise marriage according to the usages ..... of the said persons." This argument was rejected and Stirling J. said on the point (at p. 492):—

"Both these statutes (like 26 Geo. 2, c. 33) deal with the formalities of marriage, and an enactment with respect to capacity is, *prima facie* at least, beyond the purview of them."

All the foregoing considerations compel me to the conclusion that the deceased Loh Toh Met was a person who was "permitted by his personal law a plurality of wives." It is not in dispute that in accordance with the capacity he thus enjoyed he entered into relations with Madam Kong, Madam Yong and Madam Chan by virtue of which these ladies became his wives and, in my view, are now entitled to be regarded as his widows. It follows, too, that the children born during wedlock of which he is the father and of which Madam Yong and Madam Chan are the respective mothers are his legitimate natural children.

In these circumstances I would allow the appeal so far as the widows and natural children are concerned.

In my view the order which should be made is as follows:

(1) Letters of Administration should issue to Madam Kong, Madam Yong and Madam Chan jointly;

(2) There should be a declaration that Madam Kong, Madam Yong and Madam Chan are the lawful widows of the deceased, that the children Francis, Anthony, Philomena, Charlie, Daniel, Emmanuel and Rosa are the natural children of the deceased born in wedlock and that these persons and these persons alone are the persons entitled to succeed to the estate as provided by the Distribution Ordinance.

As regards costs, I think the respondent Loh Peng Heng should pay the taxed costs of all parties incurred after the date on which he filed his caveat, and that all costs other than those of and to be borne by Loh Peng Heng should be taxed on a solicitor and client basis and be paid out of the estate.

Hill J.A.: I agree with the learned Chief Justice that these appeals should be allowed and that the following order be made:—

(1) Letters of Administration should issue to Madam Kong, Madam Yong and Madam Chan jointly;

(2) There should be a declaration that Madam Kong, Madam Yong and Madam Chan are the lawful widows of the deceased, that the children Francis, Anthony, Philomena, Charlie, Daniel, Emmanuel and Rosa are the natural children of the deceased born in wedlock and that these persons and these persons alone are the persons entitled to succeed to the estate as provided by the Distribution Ordinance.

I also agree that the respondent Loh Peng Heng should pay the taxed costs of all parties incurred after the date on which he filed his caveat and that all costs other than those of and to be borne by Loh Peng Heng should be taxed on a solicitor and client basis and be paid out of the estate.

At the conclusion of the hearing of this appeal the Court was unanimously agreed that the appeal should be allowed, but it was felt that the matter was of such importance that our decisions should be recorded in writing.

Some months ago, in fact early in December, 1960, I set down my views in a rough draft judgment. In view of the exhaustive judgment of the learned Chief Justice and of the many decisions on kindred subjects I do not wish to add unnecessarily to what has been already written, but I feel it is just as well that I should state as briefly as possible why I am of the opinion, on the facts found by Neal J., that each of the three marriages was a valid one.

In the first place it is abundantly clear that for many years Chinese polygamous marriages have been recognised in Johore and in Singapore as valid and conferring the status of wife, first or secondary, on the women with rights of inheritance to them and to their children.

It is perhaps true as Neal J. stated that the Courts have never extended (in so many words) the principle of customary marriage to cover the case where one of the parties to the marriage was a Christian. But in *Dorothy Yee case* Thomson J. (as he then was) stated:

"In the Straits Settlements, however, whatever may be the position as regards other races, the only conclusion that can be drawn from the *Six Widows' Case, supra*, which is the classical case on the subject, is that as regards Chinese the question of personal law is based on race. The Courts in effect have given judicial recognition to certain customs prevalent or thought to be prevalent among persons of Chinese race irrespective of their domicile or religion. They have thus set up what might be called a sort of common law as affecting persons of Chinese race and it would seem that the case is the same in those portions of the present Federation which were not formerly part of the Straits Settlements or, perhaps more accurately, which were part of the former Federated Malay States."

It is a natural corollary of this statement that a Christian Chinese may legally contract a polygamous marriage if to do so is consistent with his personal law based on race. Neal J. somewhat lightly brushed aside this opinion with an expression of regret though it was an opinion contained in a carefully reasoned and long-considered judgment.

As the first plaintiff was married in Singapore and the other two wives in Johore it is necessary to consider the relevant Christian Marriage laws in existence in the two States at the times of these marriages. They are Cap. 82 of the Singapore laws and Enactment 53 of

Johore. For the purposes of this appeal there are no material differences in these two laws.

The preambles to these laws are respectively "To consolidate the law relating to Christian Marriage" and "To provide for the Marriage of persons professing the Christian religion" and both laws achieve these objects, but the preambles would have been more correct, in my opinion, if the word "monogamous" had also been used.

It seems to me that these two laws in so far as a Christian is concerned lay down a form of solemnization which must be observed if the marriage is to be monogamous in accordance with the Christian faith and legally recognized as such.

But in Part VI of both these laws there is provision for monogamous marriages by way of a civil ceremony. It surely follows that if a couple of professed atheists wish their union to be monogamous there is nothing in these laws that forbids them availing themselves of the civil ceremony and thereby contracting a valid monogamous marriage.

It is clear beyond doubt that the only valid monogamous marriage a Christian could contract was as provided for in these two laws, but nowhere in them is a polygamous marriage by a Christian forbidden if his personal law based on his race recognises polygamy.

If a person is a Christian and at the same time his personal law based on his race recognises polygamous marriages, surely he is free to choose whether he will contract as a Christian a valid monogamous marriage or to form a valid polygamous union or unions in accordance with his personal law. If it was the intention in either of the Christian Marriage laws under consideration to forbid to such a person valid polygamous unions, that object in my view was not achieved. Nowhere is such a marriage expressly or impliedly forbidden.

I have referred to many of the cases cited by the learned Chief Justice. With the exception of the judgment by Murray-Aynsley C.J. in *Re Henry Lee Fow Lee, deceased* [26] I find in none of them anything contrary to the opinion I have formed. As no reasons whatever were given for the judgment in the *Henry Lee Fow Lee* case, I need say no more than that I disagree with the bare opinion expressed by the learned Chief Justice.

I therefore hold that the marriages of the deceased Loh Toh Met to the first and second plaintiffs and to the first defendant were all valid marriages and that the three widows and the natural children of the deceased by them are entitled to succeed to the estate of the deceased and entitled to their respective shares in his estate.

Rigby J.: I had myself written a somewhat lengthy judgment in this case. But since doing so I have had the advantage of reading the judgment of the President of the Court. It expresses so comprehensively and with such clarity the views that I had already formed that it would be mere useless verbiage for me to add anything further. I am, therefore, content to say that for the reasons so lucidly stated by the President, with which I am in entire agreement, I would allow this appeal.

I concur in the consequential order proposed by the President at the conclusion of his judgment, and in the view expressed by him as to the proper order as to costs.

Appeal allowed.

Solicitors: *Murugason & Co.; Philip Hoalim & Co.: Allen & Gledhill; M. B. Brash; Mallal & Namazie.*

DOWSE v. ATTORNEY-GENERAL, FEDERATION OF MALAYA

[J.C. (Lord Radcliffe, Lord Denning and Lord Guest) May 2, 1961]

[Privy Council Appeal No. 55 of 1960]

Evidence — Corroboration — Evidence to be corroborative must be truly probative of the relevant issue — Judge does not have to analyse criteria when stating conclusion.

This appeal arises out of a Matrimonial Cause between the appellant and his wife, in which in November, 1958, the High Court of Penang pronounced a decree *nisi* in favour of the appellant. In February, 1959, the respondent intervened in the proceedings to show cause why the decree should not be made absolute, alleging that on three occasions in February and March, 1958, the appellant had committed adultery with one Miss Tan. In the Court of first instance, there was a direct conflict of evidence between Miss Tan and the appellant. She deposed that intimacy had taken place between them on the occasions charged; he denied. The trial Judge, directing himself that, considering the nature of the issue, he ought not to act on Miss Tan's evidence, unless there was independent corroboration in some material particular, found the corroboration in the appellant's conduct at and after an incident in August, 1958. The appellant had, on that occasion, when approached by two old ladies and Miss Tan, agreed to have the girl examined by his doctor to ascertain whether she was pregnant. The High Court accordingly found the adultery proved and rescinded the decree nisi. The appellant appealed to the Court of Appeal and his appeal was dismissed. From this order, he appealed to the Privy Council.

Held: (1) unless the appellant could offer an explanation of his having acted as he did which would remove the *prima facie* impression that he had an affair with her, his conduct did corroborate Miss Tan's evidence in a material particular and did tend to show that her accusation against him was a true one;

(2) evidence, to be corroborative, must be truly probative of the relevant issue; that is, it must positively implicate the accused person and positively show or tend to show the truth of the accomplice's story that the accused committed the offence. A fact which is indifferently consistent with the accomplice's story and the accused's denial of it is neutral and supplies no corroboration;

(3) a Judge stating his conclusions at the end of a hearing in the course of which he has had to bring certain criteria into play is entitled to state his conclusions as a whole and does not have to analyse them as if they formed the successive stages of a time sequence. What matters is that no appellate Court could be justified in departing from his treatment of the evidence and his